

May 19, 2004

WASHINGTON STATE LABOR COUNCIL
ATTN: DIANE MCDANIEL
314 FIRST AVENUE WEST
SEATTLE WA 98119

Subject: Complaint filed against Workers Against Job Killing Rules --PDC Case No. 04-299

Dear Ms. McDaniel:

The Public Disclosure Commission staff has completed its investigation of your complaint received October 28, 2003, alleging that Workers Against Job Killing Rules (WAJKR), a political committee registered with the PDC in support of Initiative 841, violated RCW 42.17 by not reporting in-kind contributions made by various contributors.

Your complaint was reviewed in light of the following statutes:

RCW 42.17.080 and .090 require political committees registered with the PDC, including statewide initiative committees to file frequent and detailed reports of contribution and expenditure activities, including in-kind contributions received in support of a statewide ballot proposition. In addition, RCW 42.17.080 requires political committees to maintain books of account open for public inspection during the eight days prior to an election.

RCW 42.17.105 prohibits any person from making, or a candidate or political committee from accepting from any one person, contributions that in the aggregate exceed more than \$5,000 during the 21 days before a general election.

RCW 42.17.020(14) states that a contribution does not include a contribution that is returned within five business days of receipt. In addition, it further states that messages in the form of reader boards, billboards, banners, or yard or window signs displayed on a person's own property are not considered contributions if no rent or other fees are normally charged for use of the billboard.

Allegation #1:

WAJKR violated RCW 42.17 by receiving in-kind contributions that exceeded \$5,000 from the Building Industry Association of Washington (BIAW) during the 21-days preceding the general election.

We found that:

- Elliot Swaney, Political Director and a registered lobbyist for BIAW, submitted a declaration along with the BIAW response addressing the \$5,000 limitation during

the 21-day period preceding the general election. In his declaration, Mr. Swaney stated that BIAW did not pledge to make in-kind contributions of staff time in support of I-841 during the 21-day period preceding the general election. Mr. Swaney stated that BIAW had no idea of the actual amount that would be contributed during the 21-day period, but said they did not anticipate that all contributions, including staff time, would exceed \$5,000.

- WAJKR reported receiving three separate in-kind contributions totaling \$9,560 from BIAW for staff time, wages and miscellaneous expenses in September, October and November 2003. WAJKR reported receiving \$4,760, \$500, and \$4,300 on September 30, October 26, and November 30, 2003, respectively.

There was no evidence provided by you that WAJKR did not accurately report receipt of in-kind contributions from BIAW, and our investigation did not reveal any evidence that the information reported was not accurate or that WAJKR accepted contributions in excess of \$5,000 during the 21 days before the general election.

Allegation #2:

WAJKR violated RCW 42.17 by accepting in-kind contributions from BIAW, that when combined with other contributions from local building associations affiliated with BIAW, exceeded \$5,000 during the 21-day period prior to the general election.

We found that:

- A \$5,000 contribution was received by WAJKR from the Master Builders Association of King and Snohomish County (a local affiliate of the BIAW) on October 21, 2003, and deposited and reported on a C-3 report on October 27, 2003. However, the \$5,000 contribution was refunded within five business days of receipt by WAJKR on October 28, 2003. Thus, the refunded contribution was not considered a contribution in accordance with RCW 42.17.020(14).
- The Home Builders Association of Kitsap County (HBAKC), also a local affiliate of BIAW, is the sole owner of an electronic billboard that is located on its property. During the 2003 election, the HBAKC billboard contained a "Yes on 841" message. The billboard is used exclusively by the HBAKC and is used to post messages about issues relevant to its members. No rent is normally charged for its use. Thus, the message in support of Initiative 841 was not a contribution to WAJKR in accordance with RCW 42.17.020(14).

Therefore, no entity with whom BIAW shared a limit was found to have made a contribution to the WAJKR during the 21-day period preceding the 2003 general election.

Allegation #3:

WAJKR failed to report all in-kind contributions it received in the form of staff time from the Association of Washington Business (AWB), Independent Business Association (IBA), National Federation of Independent Business (NFIB), Washington State Farm Bureau (WSFB), and the Washington Food Industry (WFI) in violation of RCW 42.17. Specifically, you alleged that WAJKR failed to report in-kind contributions from the

entities listed above for work performed by paid staff in support of I-841 in the form of editorial board appearances, speaking engagements, press contacts, and related activities. PDC staff reviewed the WAJKR website, and under the heading "About I-841" and "Press Contacts" were the names of five individuals from the five organizations listed above with information about how to contact those organizations for I-841 information. The website also included a category for "Speaker Requests" and listed representatives of NFIB, AWB and BIAW.

- The WAJKR website listed Gary Smith, Executive Director and a registered lobbyist for the IBA, as a press contact. Mr. Smith stated he did not know he had been listed as a "press contact" by WAJKR until he received a copy of the complaint. He said he received no press contacts as a result of being listed on the WAJKR website. No evidence was provided, nor was any evidence found during the course of our investigation, substantiating the allegation that the IBA or Gary Smith made "press contacts" related to WAJKR, and that WAJKR failed to report those activities.
- The WAJKR website listed Carolyn Logue, NW Regional and Washington State Director and registered lobbyist of the NFIB as a press contact and speaker. Ms. Logue filed a Monthly Lobbyist Expense Report (PDC Form L-2) on November 17, 2003, disclosing two in-kind contributions from NFIB to WAJKR totaling \$470 for NFIB staff time and mileage for a speech in Kent in September 2003, and for NFIB staff time and mileage for a press interview in October, both related to I-841. The L-2 report also disclosed a \$50 personal contribution made by Ms. Logue to WAJKR. PDC staff asked Ms. Logue to estimate her time spent answering calls from reporters and returning calls to reporters concerning NFIB's position in support of I-841. She estimated spending 1.5 hours during the month of October making and receiving such calls. Ms. Logue said that at the time of the calls she did not believe she was working on behalf of the I-841 campaign, but rather on behalf of NFIB members. The value of Ms. Logue's estimated time on these calls was \$83. In accordance with WAC 390-16-207(6), in-kind contributions from one source that are received by a political committee are not reportable by the recipient until the aggregate value of those in-kind contributions exceed \$50 during a reporting period. The calls by Ms. Logue occurred over the course of three reporting periods during October 2003. Thus, it is unlikely that WAJKR had a reporting obligation for the estimated \$83 in in-kind contributions from NFIB.
- The WAJKR website listed Dean Boyer, Director of Public Relations for the WSFB as a press contact. The WSFB said its members endorsed I-841, and they signed the official voters' guide statement in support of I-841. Mr. Boyer only authored the communication to WSFB members regarding the organization's support of I-841. This included a column in the *October 2003 Farm Bureau News* titled "From the President's Desk." Mr. Boyer submitted a declaration stating that he did not attend any meetings, rallies, editorial boards, press conferences, or any other campaign event or gathering sponsored by WAJKR. He said he was not aware he had been listed as a press contact by the "Yes on I-841" campaign until he received a copy of the complaint. No evidence was provided to substantiate the allegation that WAJKR received reportable in-kind contributions from the WSFB or Dean Boyer.

- The WAJKR website listed Doug Henken, President of the WFI, as a press contact. Mr. Henken and WFI employee Amy Brackenbury were both registered lobbyists for WFI in 2003. The initial Lobbyist Monthly Expense Reports (PDC Form L-2) filed by Mr. Henken and Ms. Brackenbury for October 2003, did not disclose monetary or in-kind contributions to WAJKR. The WFI indicated in its initial response to the PDC that WFI saw its role as educating voters on Initiative 841, and said they only provided voters information on how ergonomic rules would impact the food industry. Cliff Finch, WFI Vice-President, stated that WFI made a good-faith effort to comply with the PDC's letter dated January 22, 2004, to provide an accounting of WFI employee staff time spent at editorial board appearances, responding to speaker requests, and in responding to inquiries as a press contact in support of I-841. Mr. Finch said neither Mr. Henken nor Ms. Brackenbury are presently employed by WFI, both having terminated their lobbyist registrations for WFI. Mr. Henken filed an amended L-2 report for October 2003, disclosing a \$195 in-kind contribution to WAJKR for the value of his time spent supporting Initiative 841. Ms. Brackenbury filed an amended L-2 report for October 2003, disclosing a \$500 in-kind contribution from WFI to WAJKR.
- The WAJKR website listed Amber Balch, Director of Government Affairs and a registered lobbyist for AWB, as a press contact and speaker on behalf of I-841. Ms. Balch included on her L-2 report for October 2003, in-kind contributions from AWB to WAJKR totaling \$829, for the value of Ms. Balch's staff time and expenses for participating in newspaper editorial board meetings, forums and other media-related events that supported Initiative 841. Ms. Balch also disclosed a \$50 personal contribution to WAJKR on her October L-2 report. In its response, AWB stated that Ms. Balch was representing its members, not WAJKR, and that simply listing the names of AWB and Ms. Balch on the WAJKR campaign website did not constitute an in-kind contribution to WAJKR for which reporting was required. AWB indicated in its response that Don Brunell, AWB President, did not have a major campaign role with regard to the I-841 campaign as you alleged. Mr. Brunell wrote a newspaper column for dissemination to several newspapers in the state urging the passage of I-841. However, no evidence was found that this activity was done at the request or suggestion of WAJKR, and this activity was not a contribution to WAJKR.

WAJKR was not made aware of and did not report in-kind contributions of \$829 from AWB for Amber Balch's time, \$695 from WFI for Doug Henken's and Amy Brackenbury's time, or \$470 from NFIB for Carolyn Logue's time. Those organizations are now aware that employee staff time spent in support of ballot propositions is reportable and that the benefiting recipient is to be timely notified of the value of the contribution. While the combined non-reported in-kind contributions from these three organizations totaled \$1,994, the in-kind contributions represented a small fraction of the \$1,519,933 in total contributions reported by WAJKR. No enforcement action will be taken in this instance.

Allegation #4:

WAJKR failed to provide documentation during the open records inspection period eight days before the 2003 general election.

We found that:

- WAJKR stated that their “books of account” and reports filed with the PDC disclosed only eight contributions in excess of \$5,000, with none received during the 21-day period preceding the general election that began on October 14, 2003. WAJKR went on to state that you did not provide any evidence to suggest that monies in excess of \$5,000 were received after Oct. 13, 2003. WAJKR stated that each check was hand delivered on October 13, 2003, or received by mail on October 11, 2003. WAJKR provided declarations from three individuals stating that the contributions were received in hand on or before October 13, 2003.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Vice Chair of the Public Disclosure Commission, acting on behalf of the Chair, I am dismissing your complaint against Workers Against Job Killing Rules.

If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll free at 1-877-601-2828.

Sincerely,

Vicki Rippie
Executive Director

c: Tim Harris, Building Industry Association of Washington